Baharuddin bin Kamsin v Pihak Berkuasa Sidang Panglima Armada Pengkalan TLDM Lumut

HIGH COURT (TAIPING) — CRIMINAL APPLICATION NO 44-7-95
ZULKEFLI JC
7 DECEMBER 1995

Criminal Procedure *— Habeas corpus — Proper procedure — Affidavit — Whether affidavit filed by applicant was defective as it was affirmed before Commissioner for Oaths — Criminal Procedure Code (FMS Cap 6) s 424(1)*

Criminal Procedure *— Habeas corpus — Pending trial, detention — Whether close arrest unlawful if made before court-martial commenced — Whether first respondent has power to invoke r 16(1) of the Armed Forces (Court-Martial) Rules of Procedure 1976 to detain applicant before trial commenced — Whether commanding officer can detain applicant under s 96(3) Armed Forces Act 1972 after applicant has been brought before court-martial — Whether continued second detention was unlawful due to earlier unlawful detention — Armed Forces (Court-Martial) Rules of Procedure 1976 r 16(1) — Armed Forces Act 1972 s 96(3)*

The applicant, a member of the rank and file of the Royal Malaysian Navy, applied for a writ of habeas corpus ad subjiciendum. He was detained under close arrest at the Sungai Wangi Camp in Perak on 8 September 1995 after the trial before the court-martial on two charges framed against him did not commence as scheduled and was rescheduled for hearing on 3 October 1995. Prior to 8 September 1995, the applicant had never been placed under any form of arrest. On 3 October 1995, the trial was adjourned for continued hearing on 4 December 1995 and the applicant was continuously detained thereafter. Federal Counsel for the respondent made a preliminary objection as regards the admissibility of the affidavit filed by the applicant as being defective since the said affidavit was sworn before a Commissioner for Oaths who was not a person categorized under paras (a)–(d) of s 424(1) of the Criminal Procedure Code (FMS Cap 6) ('the CPC'). The issue raised by the applicant was that he could only be placed under close arrest after the trial had commenced under r 16(1) of the Armed Forces (Court-Martial) Rules of Procedure 1976 ('Rules of Procedure'). However, Federal Counsel argued that the applicant was lawfully detained by virtue of the power vested in the commanding officer under s 96(3) of the Armed Forces Act 1972 to detain the applicant at any stage of the investigation and trial of the case ('the Act').

Held, allowing the application for writ of habeas corpus and ordering the immediate release of the applicant:

(1) The phrase 'subject to any rules of the court' appearing in s 424(1) of the CPC would mean that the provisions of the Commissioner for Oaths Rules 1993, being rules made by virtue of the powers conferred by s 11(2) of the Courts of Judicature Act 1964 would apply, and an affirmation before a duly appointed Commissioner for Oaths as appeared to have been made in this case by the applicant would therefore be in order and in compliance with the said requirement of s 424(1) of the CPC. Therefore, the preliminary objection was dismissed (see p 190A–D).

(2) Rule 16(1) of the Rules of Procedure comes into operation at the stage when the trial of the applicant as an accused person before the court-martial had commenced and only then can the applicant be detained under close arrest. Here, the court-martial did not commence on 8 September 1995 but on 3 October 1995 when one witness was called to give evidence. Since the trial did not commence on 8 September 1995, the first respondent had no power to invoke r 16(1) of the Rules of Procedure to detain the applicant under close arrest on 8 September 1995 and such detention was unlawful in the circumstances of the case (see pp 191G–I, 192A–C; *Savrimuthu v PP* [1987] 2 MLJ 173 followed).

(3) The provision of s 96(3) of the Act is only applicable at the stage when the applicant as an accused person had not been brought for trial before the court-martial. In the present case, the applicant had already appeared before the court-martial and the charges had been preferred against him. There was no question of the commanding officer exercising his power to detain the applicant under close arrest at this stage of the proceeding before the court-martial. Also as a matter of fact, this allegation of the commanding officer invoking his power under s 96(3) was not averred to at all in the affidavit of the first respondent. In the absence of such an averment, it must be taken to mean that there was no exercise of such power under s 96(3) of the Act by the commanding officer to detain the applicant until the hearing of the applicant's case before the court-martial (see p 192D–G).

(4) There was nothing shown in the affidavit of the first respondent that he had invoked his discretionary power under r 16(1) of the Rules of Procedure on 3 October 1995 to detain the applicant under close arrest. It would appear that the detention of the applicant was a continuous detention from 8 September right through 3 October and until the next hearing date on 4 December 1995. Even if the applicant was rightly detained by the first respondent by virtue of his discretionary power under r 16(1) of the Rules of Procedure, the detention of the applicant as from

3 October 1995 onwards would still constitute an unlawful detention because the detention on 3 October had flowed from the unlawful detention effected on 8 September 1995. If a detention of a person is a continuation of an earlier unlawful detention then the second detention is unlawful (see pp 192H–I, 193A–C; *Tan Hock Chan v Menteri Dalam Negeri, Malaysia & Ors* [1994] 1 MLJ 60 followed).

[Bahasa Malaysia summary

Pemohon, seorang ahli berpangkat rendah dalam Tentera Laut Di Raja Malaysia, memohon untuk writ habeas corpus ad subjiciendum. Dia ditahan di bawah tahanan kawalan ketat di Kem Sungai Wangi, Perak pada 8 September 1995 selepas perbicaraan di hadapan mahkamah tentera di atas dua pertuduhan yang dibuat terhadapnya tidak bermula seperti yang dijadualkan tetapi dijadualkan semula untuk perbicaraan pada 3 Oktober 1995. Sebelum 8 September 1995, pemohon tidak pernah ditahan langsung. Pada 3 Oktober 1995, perbicaraan ditangguhkan untuk sambung bicara pada 4 Disember 1995 dan tahanan pemohon terus disambungkan. Peguam Persekutuan telah membuat satu bantahan awal berhubung dengan kebolehterimaan afidavit yang difailkan oleh pemohon atas alasan bahawa ia adalah defektif, oleh kerana afidavit tersebut diangkat sumpah di hadapan Pesuruhjaya Sumpah yang bukannya seorang yang dikategorikan dalam perenggan (a)–(d) dalam s 424(1) Kanun Acara Jenayah (NMB Bab 6) ('Kanun itu'). Isu yang dibangkitkan oleh pemohon adalah bahawa dia hanya boleh diletakkan di bawah tahanan kawalan ketat selepas perbicaraan bermula mengikut k 16(1) Kaedah-Kaedah Acara (Mahkamah Tentera) Angkatan Tentera 1976 ('Kaedah itu'). Walau bagaimanapun, Peguam Persekutuan mengatakan bahawa pemohon ditahan mengikut undang-undang dengan kuasa yang diberikan kepada pegawai pemerintah di bawah s 96(3) Akta Angkatan Tentera 1972 untuk menahan pemohon pada mana-mana peringkat siasatan dan perbicaraan kes itu ('Akta itu').

Diputuskan, membenarkan permohonan untuk writ habeas corpus dan mengarahkan pemohon dibebaskan terus:

(1) Ungkapan 'subject to any rules of the court' yang wujud dalam s 424(1) Kanun itu bermaksud bahawa peruntukan dalam Kaedah-Kaedah Pesuruhjaya Sumpah 1993, yang merupakan kaedah-kaedah yang dibuat di bawah bidang kuasa yang diberikan oleh s 11(2) Akta Mahkamah Kehakiman 1964 boleh digunakan, dan sumpahan di hadapan Pesuruhjaya Sumpah seperti yang dibuat dalam kes ini oleh pemohon adalah teratur dan menurut kehendak s 424(1) Kanun itu. Maka, bantahan awal itu ditolak (lihat ms 190A–D).

A (2) Kaedah 16(1) dalam Kaedah itu beroperasi di peringkat apabila perbicaraan pemohon sebagai orang tertuduh di mahkamah tentera telah dimulakan dan hanya pada waktu itu pemohon boleh ditahan di bawah tahanan kawalan ketat. Di sini, perbicaraan di mahkamah tentera tidak bermula pada 8 September 1995 tetapi pada 3 Oktober 1995 apabila seorang saksi dipanggil B memberi keterangan. Oleh kerana perbicaraan tidak bermula pada 8 September 1995, penentang pertama tidak mempunyai kuasa untuk menggunakan k 16(1) Kaedah itu untuk menahan pemohon di bawah tahanan kawalan ketat pada 8 September 1995 dan penahanan itu tidak sah mengikut keadaan kes ini C (lihat ms 191G–I, 192A–C; *Savrimuthu v PP* [1987] 2 MLJ 173 ditahan).

(3) Peruntukan dalam s 96(3) Akta itu hanya boleh digunakan di peringkat di mana pemohon adalah orang tertuduh yang belum dihadapkan ke mahkamah tentera. Dalam kes ini, pemohon telah D dihadapkan ke mahkamah tentera dan pertuduhan telah dibuat terhadapnya. Tidak terdapat persoalan pegawai pemerintah menggunakan kuasanya untuk menahan pemohon di bawah tahanan kawalan ketat di peringkat prosiding ini didepan mahkamah tentera bermula. Juga mengikut fakta, pengataan mengenai pegawai pemerintah menggunakan kuasanya di bawah E s 96(3) tidak ditegaskan dalam afidavit responden pertama. Dengan tiadanya penegasan sebegitu, ia bermaksud bahawa tiada penggunaan kuasa di bawah s 96(3) Akta itu oleh pegawai pemerintah untuk menahan pemohon sebelum perbicaraan kes pemohon di mahkamah tentera bermula (lihat ms 192D–G).

F (4) Tidak terdapat apa-apa dalam afidavit penentang pertama yang menunjukkan bahawa dia telah menggunakan kuasa budi bicaranya di bawah k 16(1) Kaedah itu pada 3 Oktober 1995 untuk menahan pemohon di bawah tahanan kawalan ketat. Nampaknya penahanan pemohon adalah tahanan bersambungan dari 8 September sehingga 3 Oktober dan sehingga tarikh G perbicaraan yang akan datang iaitu pada 4 Disember 1995. Biarpun pemohon telah ditahan secara sah oleh penentang pertama di atas kuasa budi bicara di bawah k 16(1) Kaedah itu, penahanan pemohon pada 3 Oktober 1995 dan seterusnya masih akan menjadi tahanan tidak sah kerana tahanan dari 3 Oktober H telah berterusan dari tahanan tidak sah yang bermula dari 8 September 1995. Jika tahanan seseorang bersambungan dari tahanan awal yang tidak sah maka tahanan yang keduanya juga tidak sah (lihat ms 192H–I, 193A–C; *Tan Hock Chan v Menteri Dalam Negeri, Malaysia & Ors* [1994] 1 MLJ 60 diikut).]

I **Notes**

For cases on habeas corpus in criminal procedure, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1353–1407.

Cases referred to

Savrimuthu v PP [1987] 2 MLJ 173
Tan Hock Chan v Menteri Dalam Negeri, Malaysia & Ors [1994] 1 MLJ 60

Legislation referred to

Armed Forces Act 1972 s 96(3)
Armed Forces (Court-Martial) Rules of Procedure 1976 rr 16(1), 36
Criminal Procedure Code (FMS Cap 6) s 424(1)
Commissioner for Oaths Rules 1993
Courts of Judicature Act 1964 s 11(2)

Naran Singh (*Naran Singh & Co*) for the applicant.
Nurulhuda Nur'Aini bte Mohd Nor (Federal Counsel) for the respondent.

Zulkefli JC: This is an application by one Baharuddin bin Kamsin, a member of the rank and file of the Royal Malaysian Navy ('the RMN') attached to the Royal Malaysian Naval Base at Lumut, Perak for a writ of habeas corpus ad subjiciendum. The facts surrounding this application are as follows.

On 21 October 1994, the applicant was directed by his commanding officer to undergo a urine test for the purpose of detecting whether the applicant was involved in drug abuse. A chemist report dated 23 November 1994 confirmed the urine test of the applicant as being positive in that it contained active ingredients of the drug cannabis. On 17 April 1995, the applicant was served with an abstract of evidence consisting of signed statements of four witnesses as is necessary to prove the charge against the applicant under r 36 of the Armed Forces (Court-Martial) Rules of Procedure 1976 ('Rules of Procedure'). The trial of the applicant before the court-martial on the charges framed against him was fixed for hearing on 8 September 1995. The following two charges were framed by the first respondent, the convening authority, against the applicant:

Pertuduhan Pertama:

Tidak mematuhi perintah-perintah tetap yang bertentangan dengan s 51 Akta Angkatan Tentera 1972 iaitu ia di pasukan khas laut, Pengkalan TLDM 32100, Lumut, Perak Darul Ridzuan pada 21 October 1994 lebih kurang jam 11 pagi telah tidak mematuhi Perintah Am Panglima Armada s 1208(3) yang diketahuhinya atau yang sepatutnya ia patut mengetahui telah menyalahgunakan dadah berbahaya iaitu 'cannabis' melalui ujian kencing positif.

Pertuduhan Kedua:

Kelakuan yang memudaratkan keadaan baik dan tatatertib perkhidmatan yang bertentangan dengan s 87 Akta Angkatan Tentera 1972 iaitu ia di pasukan khas laut, Pengkalan TLDM 32100, Lumut, Perak Darul Ridzuan pada 21 Oktober 1994 telah terlibat dan ada bersangkut paut dengan

menyalahgunakan dadah di mana air kencingnya didapati positif melalui laporan dari Jabatan Kimia Ipoh bertarikh 23 November 1994.

The trial of the applicant on the said two charges before the court-martial on 8 September 1995 did not commence as scheduled and the trial was rescheduled for hearing on 3 October 1995. Pending the said hearing date on 3 October 1995, the applicant was detained under close arrest on 8 September 1995 at the Sungai Wangi Camp, Sitiawan, Perak. Prior to 8 September 1995, the applicant had never been placed under any form of arrest. By a letter dated 15 September 1995, the applicant through his counsel made an application to the first respondent for the release of the applicant from the said detention but until the day of hearing of this application the applicant had not been so released. The first respondent in a letter dated 18 September 1995 to the counsel of the applicant however replied by stating that on the ground of security the applicant should not be released from close arrest while he is on trial before the court-martial. On 3 October 1995, the trial of the applicant on the said two charges before the court-martial commenced and after one witness gave evidence the trial was adjourned for continued hearing on 4 December 1995 and the applicant was continuously detained thereafter.

On the day of hearing of this criminal application on 18 October 1995, the Federal Counsel, Pn Nurulhuda appearing for both the respondents applied to the court to strike out the second respondent, the Minister of Defence, Malaysia from being cited as a party to this proceeding. I allowed the application as I am satisfied from the affidavits filed for both the applicant and the respondents that there is no evidence to show that the purported detention of the applicant had been made through the exercise of any of the powers vested in the Minister of Defence under the Armed Forces Act 1972 ('the Act'). Learned Federal Counsel at the outset of the hearing also made a preliminary objection as regards the admissibility of the affidavit filed by the applicant in support of his application. It was submitted for the respondent that the affidavit of the applicant was defective because the said affidavit was not sworn or affirmed before any magistrate or registrar or before any persons specified under s 424(1) of the Criminal Procedure Code (FMS Cap 6) ('the CPC'). Section 424(1) of the CPC states as follows:

> (1) Subject to any rules of the court, any affidavit may be used in a criminal court if it is sworn —
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> (a) in the Federation before any magistrate or registrar;
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> (b) in the Republic of Singapore before any judge, district judge, registrar, police, magistrate or before any person authorized to take affidavits by any written law in force in the Republic of Singapore;
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> (c) In England, Scotland, Ireland or the Channel Islands or in the colony, island or place (other than the above) under the dominion or jurisdiction or protection of Her Britannic Majesty, before any judge, court, notary public or other person lawfully authorized to administer oaths;

(d) in any other place before any officer exercising consular functions on behalf of the Federation. A

It was submitted for the respondent that since the affidavit of the applicant in support of his application was affirmed before a Commissioner for Oaths, not being a person categorized under any of the persons listed in paras (a)–(d) of s 424(1) of the CPC and the present application being criminal in nature it therefore follows that the affidavit of the applicant is defective and being defective the court should dismiss this application without having to hear the merits of the case. With respect to the contention of learned Federal Counsel, I do not agree with her and I dismissed the said preliminary objection. It is my view that the phrase 'subject to any rules of the court' appearing in sub-s (1) of the said s 424 of the CPC would mean that the provisions of the Commissioner for Oaths Rules 1993, being rules made by virtue of the powers conferred by s 11(2) of the Courts of Judicature Act 1964 would apply, and an affirmation before a duly appointed Commissioner for Oaths as appeared to have been made in this case by the applicant would therefore be in order and in compliance with the said requirement of s 424(1) of the CPC. B C D

In dealing with the application proper, En Naran Singh, counsel for the applicant submitted that the first respondent had acted unlawfully in ordering the detention of the applicant under close arrest on 8 September 1995. It was submitted that close arrest is tantamount to putting the applicant in an army prison. The applicant in this case was not served with any order of detention nor was he given the reasons for his arrest on 8 September 1995. It was further submitted for the applicant that if the first respondent contended that he was exercising his discretionary power under r 16(1) of the Rules of Procedure to justify the detention of the applicant on 8 September 1995, such a contention is untenable in the circumstances of the case. Rule 16(1) of the Rules of Procedure states as follows: E F

> During his trial by a court-martial, the accused shall be held under close arrest, except where the convening authority directs that for the period of any adjournment of the court he shall be held under open arrest or released from arrest. G

Learned counsel for the applicant contended that under the said r 16 of the Rules of Procedure, the applicant can only be placed under close arrest when the trial of the applicant before the court-martial had commenced. In this case on 8 September 1995, the trial of the applicant had not commenced at all. It was only on 3 October 1995 that the trial commenced when one witness was called to give evidence. For the applicant, it was also submitted that even if the first respondent was right in his claim that he had the discretionary power to detain the applicant under r 16(1) of the Rules of Procedure either on 8 September 1995 or 3 October 1995, such power was exercised mala fide. It was submitted that the first respondent acting as the convening authority did not apply his mind at all in invoking H I

A the said r 16(1) of the Rules of Procedure. Prior to 8 September 1995, the applicant was not placed under any form of arrest. Suddenly on 8 September 1995, the applicant was placed under close arrest. For the applicant, it was submitted that no evidence had been adduced by the first respondent to say that the applicant was interfering in the process of the trial before the B court-martial. The first respondent in his affidavit in reply only averred that the fact that the applicant is a member of the elite team of commandos in the RMN it would be against the security interest of the RMN that the applicant be released from close arrest while he is on trial before the court-martial. The applicant contended that if what was stated by the first respondent is true the first respondent could have ordered the detention of C the applicant much earlier before 8 September 1995 as the first respondent or the commanding officer had ample powers under the provisions of the Act and the Rules of Procedure to do so.

For the first respondent, it was conceded by learned Federal Counsel that the trial of the applicant before the court-martial only commenced on D 3 October 1995. It was submitted for the first respondent that as the trial had commenced on 3 October 1995, the provision of r 16(1) of the Rules of Procedure applies and the applicant as an accused person was rightly detained under close arrest by virtue of the operation of the law as envisaged by the said r 16(1) which requires the applicant to be detained during the period of his trial and during the period of the adjournment of the trial E unless the first respondent directed otherwise. When asked by this court how the first respondent could justify the detention of the applicant under close arrest on 8 September 1995, learned Federal Counsel replied by submitting that under s 96(3) of the Act, the commanding officer of the applicant may invoke his powers to detain the applicant at any stage of the F investigation and trial of the case against the applicant and that on 8 September 1995 such power could have been so exercised. Section 96(3) of the Act reads as follows:

> (3) If, after investigation, any charge is not dealt with summarily as aforesaid, the accused shall be remanded for trial by court-martial.

G Having heard the submission of both counsel for the applicant and Federal Counsel for the first respondent and having perused the affidavits filed by both parties, I am of the view that the question of whether the applicant had been lawfully detained or not is focused on the correct interpretation and the application of the provision of r 16(1) of the Rules of Procedure to the facts and circumstances of this case. As I see it the said r 16(1) of H the Rules of Procedure comes into operation at the stage when the trial of the applicant as an accused person before the court-martial had commenced and only then can the applicant as in this case be detained under close arrest. It is my view that the phrase 'during his trial by a court-martial' means that the trial of the applicant as in this case must have commenced I before the court-martial. As regards the meaning of commencement of trial, in the case of *Savrimuthu v PP* [1987] 2 MLJ 173, Tun Salleh Abbas

LP in delivering the judgment of the Supreme Court at p 177 stated as follows: A

> Thus in the context the commencement of trial must mean the commencement of the examination, cross-examination and re-examination of one or more witnesses.

In the present case, I find that the trial before the court-martial did not commence on 8 September 1995 but it commenced on 3 October 1995 when one witness was called to give evidence. Since the trial did not commence on 8 September 1995, it is my finding that the first respondent had no power to invoke r 16(1) of the Rules of Procedure to detain the applicant under close arrest on 8 September 1995 and such detention was unlawful in the circumstances of the case. B C

As regards the contention of learned Federal Counsel that on 8 September 1995 the applicant was in fact lawfully detained by virtue of the power vested in the commanding officer under s 96(3) of the Act, I could not agree with her. The provision of s 96(3) of the Act in my view is only applicable at the stage when the applicant as an accused person had not been brought as yet for trial before the court-martial. Section 96(3) empowers the commanding officer to detain the applicant as an accused person at a stage when he has completed his investigation on the applicant and decides not to try the applicant summarily by himself but decides that the applicant be tried before the court-martial. In the present case, the applicant had already appeared before the court-martial and the charges had been preferred against him. There is no question of the commanding officer exercising his power to detain the applicant under close arrest at this stage of the proceeding before the court-martial. On this point, I also find as a matter of fact that this allegation of the commanding officer invoking his power under s 96(3) was not averred to at all in the affidavit of the first respondent. In the absence of such an averment, it must be taken to mean that there was no exercise of such power under s 96(3) of the Act by the commanding officer to detain the applicant until the hearing of the applicant's case before the court-martial. D E F

The next issue to be considered is that if the detention of the applicant under close arrest on 8 September 1995 was unlawful whether it can be said that as from 3 October 1995 when the trial is deemed to have commenced before the court-martial by virtue of r 16(1) of the Rules of Procedure, the detention under close arrest of the applicant becomes lawful thereafter. In this case there is nothing shown in the affidavit of the first respondent that he had invoked his discretionary power under r 16(1) of the Rules of Procedure on 3 October 1995 to detain the applicant under close arrest. It would appear, therefore, that the detention of the applicant was a continuous detention from 8 September right through 3 October and until the next hearing date on 4 December 1995. That being the case, I am of the view that even if the first respondent contended that as from 3 October 1995 he G H I

had rightly detained the applicant by virtue of his discretionary power under the said r 16(1) of the Rules of Procedure, the detention of the applicant as from 3 October 1995 onwards would still constitute an unlawful detention because the detention on 3 October had flowed from the unlawful detention effected on 8 September 1995. It is my view that if a detention of a person is a continuation of an earlier unlawful detention then the second detention is unlawful. On this point, I would refer to the judgment of Mokhtar Sidin J in the case of *Tan Hock Chan v Menteri Dalam Negeri, Malaysia & Ors* [1994] 1 MLJ 60, wherein in at p 67 his lordship had this to say:

> What is the effect of a detention which is a continuation of an unlawful detention? The position is made clear by the case of *Koh Yoke Koon v Minister for Home Affairs, Malaysia & Anor* [1988] 1 MLJ 45 where Edgar Joseph Jr J (as he was then) held:
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> ...
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> (2) The applicant's period of detention in police custody at the Muar police station from 14 December 1986, until sometime in the morning of 16 December 1986, when he was removed to the rehabilitation centre was wholly unauthorized and therefore in violation of art 5(1) [of the Federal Constitution] as being otherwise than in accordance with [the] law;
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> (3) the detention order will not operate to salvage the case for the detaining authority for it specially provide for detention at the centre for two years from 12 December 1986 and cannot therefore have the effect of rendering legal the applicant's illegal detention at the Muar police station from 14 December 1986 until his removal therefrom on the morning of 16 December 1986;
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> (4) the detention of the applicant under s 4(1) [of the Emergency (Public Order and Prevention of Crime) Ordinance 1969] was not procured by steps all of which were entirely regular nor was the court satisfied that 'every step in the process' which led to the detention was followed with extreme regularity and therefore the court should not allow the imprisonment to continue. To hold to the contrary would in effect mean that the Minister had power to continue detention of one who is being illegally detained.
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> It is clear from the above case that the detention of a person as a result of an irregular detention will render the detention of that person as unlawful even though steps had been taken to remedy the defects. It is also clear to me that in that case, though it was shown to the court that the detention order for two years effective from 12 December 1986 which include the days when the detainee was held unlawful the whole detention order was held to be bad in law and the detention was unlawful. This decision was confirmed by the Supreme Court.

For the above reasons and in the circumstances of this case, I hold that the detention of the applicant to be unlawful. As such the applicant is entitled to the writ of habeas corpus and he is to be released immediately.

Application allowed.

Reported by Sally Kee Seok Meng